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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

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NO. 89-392

PHILIP J. BROWN, et al.,

Petitioners

v.

1250 TWENTY-FOURTH STREET ASSOCIATES
LIMITED PARTNERSHIP, et al.,

Respondents

PETITIONER'S REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

Petitioners Philip J. Brown and William J. Brown hereby reply to the Brief In Opposition To Petition For Writ Of Certiorari ("Opposition") of Respondent 1250 Twenty-Fourth Street Associates

Limited Partnership ("Respondent").[1] Petitioners assert that Respondent makes a number of misleading statements as to the facts of this case and misstates the law. The Petitioners hereby submits the following to set the record straight.

ARGUMENT

First, Petitioners address Respondent's implication that Petitioners lacked diligence in this matter. Petitioners learned of the grounds upon which the motion to recall mandate and vacate the August 12, 1988 was based on March 3, 1989,

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[1] Petitioners admittedly filed the original petition without the signature of William J. Brown. Philip J. Brown did ask for and follow the direction of the Clerk's office and believed at the time that Mr. William J. Brown was properly joined as a Petitioner as he desired. B&W Management, Inc., appellant below, also desired to be a Petitioner here but was unable to retain counsel due to the chilling effect of the decision below.

when Judge Ginsburg recused herself sua sponte from a panel scheduled to hear oral argument in Case Number 88-7102. Rather than waiting seven months to bring the motion, as Respondent asserts, Petitioners promptly and diligently filed the motion upon this recusal and release of information therein. Petitioners' rights should not be prejudiced by the passage of time during which they did not have access to vital information, information undeniably in the control of Respondent's general partner, J.W. Kaempfer, Jr. who was represented by Mr. Ginsburg's law firm. Mr. Ginsburg's law firm assisted Kaempfer in obtaining a $4 million HUD-UDAC grant and received, at minimum, a $50,000 legal fee.

Furthermore, Petitioners did not "allege" that Judge Ginsburg had a "conflict of interest". Judge Ginsburg

herself acknowledged the conflict of interest when she recused herself from Case Number 88-7102. Her subsequent abstention in matters involving these parties confirms that she believed she had a conflict.

While the order denying Petitioners' motions below relied on Judge Ginsburg's claimed lack of actual knowledge in August, 1988, Petitioners believe that this ruling was erroneous. Petitioners do not believe that the applicable standard of law requires that Judge Ginsburg knew of the conflict of interest at the time, but that she should have known.

Contrary to Respondent's characterization, Petitioners do assert that a factual basis is required for judicial disqualification. That factual basis has been met here.

Petitioners also asserts the D.C. Court of Appeals has misread this Court's

landmark rulings in Liljeberg v. Health Services Acquisition Corp. 108 S.Ct. 2194 and Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986).

The Liljeberg doctrine does not require absolute proof that a judge was aware of the conflict but rather whether an objective, reasonable person would think that she should have known. Obviously, Judge Ginsburg and her husband should have known of the facts for which she has disclaimed knowledge. Liljeberg stressed that it was appearances to the ordinary, reasonable person which were crucial to judicial inquiry.

Petitioners and other litigants should not be deprived of the ability to retain counsel when they feel deprived of their rights, nor should counsel duly retained be stripped of the ability to vigorously defend those rights by threats of

unwarranted reprisals by any court. Respondent cites no facts or law to controvert Petitioners' documented proof and case law created by this Court, and neither has the D.C. Circuit Court of Appeals.

Concerns about judicial impartiality threaten a fundamental right under the Constitution. Infringement of this right affects all as it affects one. The members of this Court have shown adherence to the concept of impartiality through numerous individual instances of sua sponte recusals and the issuance of the landmark Liljeberg ruling. The issues presented by Petitioners herein addresses this fundamental concern and warrant review by this Court.

CONCLUSION

For the above and foregoing reasons, and those contained in their original petition,

Petitioners respectfully submit that their Petition For Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit be issued.

Respectfully submitted,

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